

KING & SPALDING

101 PEACHTREE STREET
ATLANTA, GEORGIA 30303-1703
TELEPHONE 404/572-6300
FACSIMILE 404/572-5100

DIRECT DIAL
404/572-3517

DIRECT FAX
404/572-5141

July 14, 1997


Carol Browner, Administrator
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Southern Wood Piedmont Company v. AlliedSignal Inc.
Civil Action File No. 1-97-CV-0282

Dear Ms. Browner:

Enclosed is a courtesy copy of the Third-Party Complaint of Plaintiff AlliedSignal Inc. in the matter of Southern Wood Piedmont Company v. AlliedSignal Inc., Civil Action File No. 1-97-CV-0282, in the United States District Court for the Northern District of Georgia, Atlanta Division. This document is being provided to you pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9613(1).

Very truly yours,



Stephen Rahaim

Enclosure

469986

1730 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20006-4700
TELEPHONE 202/737-0500
FACSIMILE 202/737-0707

120 WEST 45TH STREET
NEW YORK, NY 10036-4003
TELEPHONE 212/556-2100
FACSIMILE 212/556-2222

1100 LOUISIANA STREET, SUITE 3000
HOUSTON, TX 77002-5219
TELEPHONE 713/751-3200
FACSIMILE 713/751-3200

4586

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

JUL 10 1997

LUTHER D. THOMAS, Clerk

By: *SKG*

Deputy Clerk

SOUTHERN WOOD PIEDMONT COMPANY,)

Plaintiff,)

v.)

CIVIL ACTION

ALLIEDSIGNAL, INC.,)

FILE NO. 1:97-CV-282-WCO

Defendant and Third-Party Plaintiff,)

v.)

BURRIS CHEMICAL, INC. and)

PB&S CHEMICAL COMPANY, INC.)

Third-Party Defendants.)

THIRD-PARTY COMPLAINT OF ALLIEDSIGNAL, INC.

COMES NOW Defendant and Third-Party Plaintiff AlliedSignal, Inc. ("Allied") and makes and files this Third-Party Complaint against Third-Party Defendants Burris Chemical, Inc. ("Burris"), and PB&S Chemical Company, Inc. ("PB&S"), and hereby shows this Court as follows:

NATURE OF THE ACTION

1.

This is an action for contribution and declaratory judgment arising under Federal law and the laws of the State of Georgia.

THE PARTIES

2.

The Third-Party Plaintiff, Allied, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Morristown, New Jersey.

3.

The Plaintiff, Southern Wood Piedmont Company ("SWP"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Inman, South Carolina.

4.

The Third-Party Defendant Burris is a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Charleston, South Carolina.

5.

The Third-Party Defendant PB&S is a corporation organized and existing under the laws of the State of Kentucky, with its principal place of business in Henderson, Kentucky.

JURISDICTION AND VENUE

6.

This court has jurisdiction over the claims asserted in this Third-Party Complaint pursuant to (a) 28 U.S.C. § 1331, which grants jurisdiction over federal causes of action; (b) 42 U.S.C. § 9613(b), which grants the United States District Courts exclusive original jurisdiction over cost recovery and contribution actions under CERCLA; and (c) 28 U.S.C. § 1367(a), which grants federal

jurisdiction over those state claims that are so related to the federal claims in the action that they form part of the same case or controversy under Article III of the United States Constitution.

7.

Venue is proper in this District and Division pursuant to 28 U.S.C. § 1391(b), 42 U.S.C. § 9613(b), and Local Rule 105-2(c) of the Rules of the United States District Court for the Northern District of Georgia, because the release of hazardous substances giving rise to these claims occurred in this District and Division.

GENERAL ALLEGATIONS

A. The SWP Property's Contamination

8.

SWP operated a wood treatment facility at 1745 Connally Drive, East Point, Georgia (the "SWP property") until 1984.

9.

On November 8, 1988, the Environmental Protection Division ("EPD") of the Georgia Department of Natural Resources ("DNR") issued a hazardous waste permit for post-closure care and corrective action on the SWP property. This regulatory action required SWP to remediate ground water contaminated by SWP's prior on-site activities.

10.

In accordance with the hazardous waste permit, SWP installed a ground water recovery system designed to pump oil and water from the ground beneath the SWP facility. This system contains monitoring wells to monitor the ground water before it is recovered and brought to the surface.

3

11.

In 1988, during sampling of ground-water monitoring wells in the northeast corner of the SWP property, acidic ground water was allegedly discovered.

12.

This contamination has allegedly damaged SWP's ground water treatment system, which has suffered from direct contact with such high levels of acidity.

13.

From 1941 until 1982, lead-acid storage batteries were manufactured at a plant owned by Eltra Corporation and located at 2316 Lawrence Street, East Point, Georgia. Eltra Corporation became a subsidiary of Allied Corporation. Allied Corporation and the Signal Corporation merged to form AlliedSignal Inc. in 1985. Sulfuric acid was a raw material used to charge the batteries. Waste sulfuric acid was neutralized in a treatment system and discharged to the sanitary sewer system. In 1982 the plant was converted to a battery storage warehouse.

14.

The Plaintiff, SWP, has filed a Complaint which alleges that the high levels of acidity discovered in certain ground water monitoring wells on the SWP property are the result of the release of sulfuric acid used at the Allied plant. SWP is seeking declaratory, injunctive, and monetary relief from Allied.

15.

Because of the Complaint filed by Plaintiff SWP, Allied has, consistent with CERCLA's National Contingency Plan (42 U.S.C. § 9605), incurred costs investigating the nature and extent of the SWP ground water contamination and defending itself in the present action.

B. The Release Of Hazardous Substances From The Burris Property

16.

Burris owned and operated a chemical manufacturing and storage facility at 2225 Lawrence Avenue, East Point, Georgia, 30344 (the "Burris property"). The Burris property is located hydraulically upgradient from, and in close proximity to, the SWP property and the allegedly affected ground water monitoring wells.

17.

Burris previously manufactured aluminum sulfate, a process which used sulfuric acid and generated acidic wastewater containing high levels of acidity, sulfate and aluminum. Burris also used the property to store and distribute various chemicals and to rinse drums that had housed chemicals. The rinsing process involved the neutralization and treatment of chemicals before they were pumped into the East Point sewer system.

18.

While manufacturing aluminum sulfate, Burris would store process water in three lagoons before the water could be treated. This process water contained chemicals with high acidity and sulfate levels.

19.

The lagoons in which the process water was stored leaked onto the ground surface and into the subsurface. In 1980, this seepage was estimated to be at the rate of roughly 2 gallons per minute or over 1 million gallons per year. This seepage was discharged to the subsurface and also drained to a nearby storm sewer.

20.

In 1992, an industrial waste inspector from the City of Atlanta discovered that a waste-water catch basin on the Burris property was discharging waste into the environment. The leaking wastewater was being discharged onto the ground surface and into a nearby stream.

21.

Many chemicals with high acidity and sulfate levels, including sulfuric acid, had been housed in the catch basin during the drum rinsing and wastewater purification process.

22.

Because of the aforementioned lagoon seepage and catch basin leak, as well as the large quantities of acidic chemicals stored, treated and distributed on the Burris property, that property is a likely source of the acidic ground water now found on the SWP property. In addition, prior releases to the ground surface have created a continuing release of hazardous substances from the Burris property into the surrounding ground water system.

23.

On or about April 24, 1997, Burris requested that the Georgia Secretary of State withdraw its status as a corporation registered to do business in the State of Georgia. On or about this same time, PB&S, a sister subsidiary to Burris and, like Burris, a wholly-owned subsidiary of Soco Chemical, Inc., began operating at the Burris location. PB&S is conducting substantially the same activities as had been conducted by Burris.

COUNT ONE

CERCLA CONTRIBUTION

24.

Third-Party Plaintiff realleges and incorporates herein the allegations set forth in Paragraphs 1 through 23 above, as if fully set forth herein.

25.

The seepage of process water from the Burris property lagoons and the leaking catch basin on the Burris property constituted disposal of hazardous substances as defined by CERCLA. 42 U.S.C. § 9601(29).

26.

The disposal of the aluminum sulfate process water and the chemicals in the catch basin constituted releases of hazardous substances as defined by CERCLA. 42 U.S.C. § 9601(22).

27.

The Burris property is a "site or area where a hazardous substance has been deposited, . . . disposed of, or placed," and is therefore a facility as defined by CERCLA. 42 U.S.C. § 9601(9)(B).

28.

Burris was an owner and an operator of the facility, as those terms are defined by CERCLA, at the time of disposal of hazardous substances. 42 U.S.C. § 9601(20)(A).

29.

PB&S is an owner and an operator of the facility, as those terms are defined by CERCLA, at the time of disposal of hazardous substances. 42 U.S.C. § 9601(20)(A).

30.

Burris and PB&S are persons as defined by CERCLA. 42 U.S.C. § 9601(21).

31.

As persons who, at the time of disposal of hazardous substances, owned and operated the facility at which such substances were disposed, Burris and PB&S are jointly and severally liable or potentially liable for recoverable costs and damages under Section 107(a) of CERCLA. 42 U.S.C. § 9607(a).

32.

The release of hazardous substances from the Burris property has caused Allied to incur, and will continue to cause Allied to incur, CERCLA response costs to investigate, determine the extent and nature of, and possibly remediate the alleged contamination on the SWP property. These costs include, and will continue to include, attorneys' fees and other expenses of investigating and maintaining this action.

33.

"Response costs" include attorneys' fees and expenses for the part played by counsel in the search for parties responsible for the release from the disposal site, and for identifying the scope of the release, because both of these prevent, minimize, or mitigate damages to the environment. Key Tronic v. United States, 511 U.S. 809 (1994).

34.

As persons liable or potentially liable under Section 107(a) of CERCLA, Burris and PB&S are liable to Allied for contribution under CERCLA for reimbursement of all response costs already incurred and to be incurred by Allied, including attorneys' fees and expenses, to investigate and

remediate the release of hazardous substances from the Burris property to the SWP property. 42 U.S.C. § 9613(f)(1).

35.

A copy of this Third-Party Complaint is being provided to the Attorney General of the United States and the Administrator of the EPA, pursuant to 42 U.S.C. § 9613(l).

COUNT TWO

CONTRIBUTION UNDER HSRA

36.

Third-Party Plaintiff realleges and incorporates herein the allegations set forth in Paragraphs 1 through 35 above, as if fully set forth herein.

37.

The substances discovered in the ground water at the SWP property are hazardous substances as defined in Georgia's Hazardous Site Response Act (HSRA). O.C.G.A. § 12-8-92(4).

38.

Burris's disposal of sulfuric acid and other chemicals, through the lagoon seepage and catch basin leaks, and continuing release of these constituents from the Burris property, constitute the release of hazardous substances. O.C.G.A. § 12-8-92(11).

39.

As persons that, at the time of disposal of hazardous substances, owned and operated a facility at which such hazardous substances were disposed of, Burris and PB&S "contributed to a release" of hazardous substances into the environment. O.C.G.A. § 12-8-92(9)(B).

40.

The aforementioned disposal of hazardous substances has caused Allied to engage in corrective action under HSRA relating to the alleged contamination on the SWP property.

41.

As a person who has contributed or is contributing to any release of hazardous substances, Burris and PB&S are liable to Allied for contribution under HSRA for costs Allied has incurred and will continue to incur in undertaking corrective action at the SWP property, which corrective action includes attorneys' fees and expenses to investigate and remediate the contamination at the facility, to defend Allied against SWP's claims, and to pursue Allied's claims against Burris and PB&S. O.C.G.A. § 12-8-96.1(e).

COUNT THREE

DECLARATORY JUDGMENT

42.

Third-Party Plaintiff realleges and incorporates herein the allegations set forth in Paragraphs 1 through 41 above, as if fully set forth herein.

43.

It is appropriate and necessary to issue a declaratory judgment that Burris and PB&S are obligated to pay and reimburse all of Allied's damages, losses, and expenses, including attorneys' fees, that have been and will be incurred by Allied in connection with the corrective action being undertaken at the SWP property to cure any and all contamination caused by their activities on the Burris property.

WHEREFORE Third-Party Plaintiff Allied demands judgment against Third-Party Defendants Burris and PB&S as follows:

(1) Damages from Burris and PB&S, in an amount to be proven at trial, for losses and expenses incurred by Allied in connection with the investigation, remediation, and costs to correct the contamination of the SWP property caused by their activities on the Burris property;

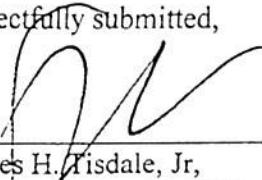
(2) Reimbursement from Burris and PB&S for all CERCLA response costs and for all HSRA corrective action costs incurred by Allied due to the release of hazardous substances from the Burris property;

(3) Reasonable attorneys' fees from Burris and PB&S incurred by Allied in connection with the investigation and remediation of contamination at the SWP property, and in connection with this action;

(4) A declaration that Burris and PB&S are liable for all of the expenses, including attorneys' fees, that Allied has and will incur in connection with the action being taken to cure any and all contamination of the SWP property caused by their activities at the Burris property.

This 10th day of July, 1997.

Respectfully submitted,



Charles H. Tisdale, Jr.
Georgia Bar No. 0712950
Stephen Rahaim
Georgia Bar No. 592123

KING & SPALDING
191 Peachtree Street
Atlanta, Georgia 30303-1763
(404) 572-4600

Attorneys for AlliedSignal, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOUTHERN WOOD PIEDMONT COMPANY,)

Plaintiff,)

v.)

CIVIL ACTION

ALLIEDSIGNAL, INC.,)

FILE NO. 1:97-CV-282-WCO

Defendant and Third-Party Plaintiff,)

v.)

BURRIS CHEMICAL, INC. and
PB&S CHEMICAL COMPANY, INC.)

Third-Party Defendants.)

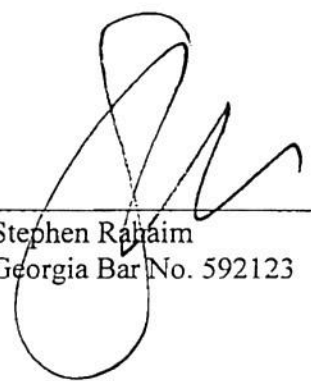
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing **THIRD-PARTY COMPLAINT**
OF ALLIEDSIGNAL, INC. on counsel for the plaintiff by causing a copy of same to be delivered
by courier to the following addresses:

William H. Kitchens, Esq.
Arnall Golden & Gregory
2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309

This 10th day of July, 1997.

KING & SPALDING
191 Peachtree Street
Atlanta, Georgia 30303-1763
(404) 572-4600



Stephen Rahaim
Georgia Bar No. 592123